

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

May 18, 2017
DCO-082

No. 17-1512

S.B., et al.,
Appellant

v.

Kindercare Learning Centers, LLC

(E.D. Pa. No. 15-cv-01499)

Present: CHAGARES, VANASKIE and KRAUSE, Circuit Judges

1. Clerk's submission for possible dismissal due to jurisdictional defect;
2. Response by Appellee;
3. Response by Appellants.

Respectfully,
Clerk/tyw

ORDER

Generally, this Court may hear appeals only from final orders of the District Court. See 28 U.S.C. § 1291. A final order ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62, 68 (1948). Dismissals without prejudice, especially those when a plaintiff voluntarily dismisses a case pursuant to Fed. R. Civ. P. 41(a)(2), are not generally considered final decisions because the plaintiff may re-file the complaint, thus resulting in the risk of "piecemeal litigation." S.B. v. KinderCare Learning Co., 815 F.3d 150, 152 (quotations and citations omitted). Nonetheless, the Court has adopted the legal prejudice exception when "unreasonably onerous conditions" are placed on "the plaintiff's right to refile the dismissed action" so that the jurisdictional bar does not apply. Id. (citing LeCompte v. Mr. Chip, Inc., 528 F.2d 601, 604 (5th Cir. 1976)). Appellants have not demonstrated that the conditions imposed on the voluntary dismissal of the case without prejudice constitute legal prejudice to warrant appeal of the order at this time. See S.B., 815 F.3d at 153-54. Accordingly, the Court lacks jurisdiction to review the order and the appeal is hereby dismissed. Appellants may appeal from an order dismissing the case with prejudice or if they decide to initiate a second action, refuse to honor the pre-

conditions of refiling, and upon the District Court's conversion of the dismissal to one with prejudice. See S.B., 815 F.3d at 154, n.3. Appellee's request to tax costs against Appellants is denied.

By the Court,

s/ Thomas I. Vanaskie
Circuit Judge

Dated: May 30, 2017

sb/cc: Rhonda H. Wilson, Esq.
Edward A. Greenberg, Esq.



A True Copy

Marcia M. Waldron

Marcia M. Waldron, Clerk
Certified order issued in lieu of mandate.